IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

WP(C).No. 13996 of 2007(N)

PETITIONER:

SHRI.S.SANAL KUMAR,
ANCHUKALLUMMOODU, KOTTAPPURAM,
PARAVOOR, KOLLAM-691 001.

BY ADV. SRI.DALE P.KURIEN

RESPONDENTS:

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1. THE COMMERCIAL TAX OFFICER,
CHATHANNOOR, KOLLAM.

2. INTELLIGENCE OFFICER,
COMMERCIAL TAXES, SQUAD NO.1,
KOLLAM.

3. THE DEPUTY COMMISSIONER OF COMMERCIAL
TAXES (INTELLIGENCE), TRIVANDRUM.

4. COMMISSIONER OF COMMERCIAL TAXES,
VIKAS BHAVAN, THIRUVANANTHAPURAM.

5. THE DISTRICT TREASURY OFFICER,
KOLLAM.

6. THE DEPUTY COMMISSIONER (APPEALS)-II,
COMMERCIAL TAXES, KOLLAM.

BY G.P. SRI. MOHAMMED RAFFIQ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 10.9.2004 ISSUED BY THE FIRST RESPONDENT.

EXT.P2 TRUE COPY OF THE APPLICSATION FOR ALTERNATION OF REGISTRATION CERTIFICSATE DATED 15.2.2007

EXT.P3 TRUE COPY OF THE NOTICE DATED 12.2.2007 UNDER SECTIONS 44(8) AND 44(9) OF THE KVAT ACT, 2003 ISSUED BY THE 2ND RESPONDENT.

EXT.P4 TRUE COPY OF THE RECEIPT DATED 12.2.2007 ISSUED BY THE 2ND RESPONDENT.

EXT.P5 TRUE COPY OF REPLY TO EXT.P3 NOTICE SUBMITTED BY THE PETITIONER DSATED 15.2.2007

EXT.P6 TRUE COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER DATED 15.2.2007 BEFORE THE 2ND RESPONDENT.

EXT.P6(a) TRUE COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER'S WIFE SMT. NILEENA C NAIR DATED 15.2.2007 BEFORE THE 2ND RESPONDENT.

EXT.P6(b) TRUE COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER'S BROTHER-IN-LAW SRI. ANIL C NAIR DATED 15.2.2007 BEFORE THE 2ND RESPONDENT.

EXT.P7 TRUE COPY OF THE SUMMONS ISSUED BY THE 2ND RESPONDENT ON THE PETITIONER DATED 17.2.2007

EXT.P7(a) TRUE COPY OF SUMMONS ISSUED BY THE 2ND RESPSONDENT ON THE PETITIONER'S WIFE SMT. NILEENA C NAIR DATED 17.2.2007

EXT.P8 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 20.2.2007

EXT.P9 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 3RD RESPONDENT DATED 20.2.2007

EXT.P10 TRUE COPY OF THE NOTICE OF HEARING DATED 27.2.2007 ISSUED BY THE 2ND RESPONDENT ON THE PETITIONER.

EXT.P11 TRUE COPY OF JUDGMENT DATED 7.3.2007

EXT.P12 TRUE COPY OF ORDER DATED 24.3.2007 PASSED BY THE 2ND RESPONDENT.

EXT.P13 TRUE COPY OF APPEALMEMORANDUM ALONG WITH GROUNDS DATED 30.3.2007

EXT.P14 TRUE COPY OF THE STAY PETITION DATED 30.3.2007

EXT.P15 TRUE COPY OF THE ORDER IN STAY PETITION PASSED BY THE DEPUTY COMMISSIONER (APPEALS) II DATED 19.4.2007

EXT.P16 TRUE COPY OF THE EARLY HEARING PETITION DATED 30.3.2007

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 13996 OF 2007

Dated this the 31st day of May, 2007

JUDGMENT

Since petitioner has filed statutory appeal against the impugned order, there is no scope for deciding the dispute raised against the impugned order in writ proceeding. The departmental case is that gold seized is liable to be sold. Even though petitioner applied for stay against the operation of the impugned order, the same is dismissed, which is under challenge in this W.P. If seized gold is allowed to be sold during the pendency of the appeal, I feel, the same will lead to hardship to the petitioner, as department cannot return the same gold which is in ornament form. The very case of the department is that petitioner was engaged in unaccounted sale of gold ornaments. In the circumstances, the minimum that the petitioner should do is to deposit double the amount of tax that is the maximum penalty that could be levied for stopping the sale of gold ornaments. W.P. is therefore disposed of directing the petitioner to deposit double the amount of tax for the value of gold seized from the petitioner within one month from

now and if deposit is so made, there will be direction to the respondents not to sell seized gold ornaments. The appellate authority will take up the appeal out of turn and dispose of the same within three months from the date of making payment as above.

(C.N.RAMACHANDRAN NAIR)
Judge